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regard to cloth, only certain categories of medium and coarse cloth will pay the duty. Superfine and fine cloth as well as certain varieties even in the above categories are exempt.

Clauses 7 and 8: The main change is in regard to the rationalisation of the taxation headings relating to tobacco and tobacco products. The change is intended to introduce a more logical basis of taxation on leaf tobacco according to its category (flue-cured or other than flue-cured) and, ordinary use; and to secure the levy of flat rates of leaf duty on tobacco used otherwise than in the manufacture of cigarettes, and of graduated rates of duty on tobacco leaf used in the manufacture of cigarettes, cigars and on manufactured products, namely, cigarettes, cigars and cheroots, pipe tobacco, snuff and biris. A surcharge is being levied on kerosene and motor spirit to equal the customs surcharge which has become leviable under Clause 5. A surcharge is also levied at graduated rates on certain categories of cigarettes other than the cheapest.

Clause 9: The discontinuance of the salt duty is maintained for the next year.

The following Bills were introduced in Parliament on the 5th March, 1951:—

BILL NO. 14 OF 1951

A Bill further to amend the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898.

BE it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Codes of Civil and Criminal Procedure (Amendment) Act, 1951.

2. **Amendment of Act V of 1908.**—In the Code of Civil Procedure, 1908,—

(*i*) to section 113, the following proviso shall be added, namely:—

"Provided that where the court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court,

Explanation.—In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State.";

(*ii*) in Order XLVI of the First Schedule,—

(*a*) after rule 4, the following rule shall be inserted, namely:—

"4A. The provisions of rules 2, 3 and 4 shall apply to any reference by the court under the proviso to section 113 as they apply to a reference under rule 1"; and

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(*b*) in rule 5, after the words and figure "under rule 1" the words and figures "or under the proviso to section 113" shall be inserted.

3. Substitution of new section for section 432 in Act V of 1898.—For section 432 of the said Code, the following section shall be substituted, namely :—

"432. *Reference to High Court.*—(1) Where any court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation.—In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State.

(2) A presidency magistrate may, if he thinks fit in any case pending before him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon."

STATEMENT OF OBJECTS AND REASONS

During the last year, a few cases have come to notice in which subordinate courts have taken upon themselves the grave responsibility of declaring enactments of the Legislature to be void under the Constitution.

Article 228 of the Constitution casts on every High Court an obligation to withdraw from a subordinate court any case if it is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution, and then either dispose of the case itself or determine the question of law and remit it to the subordinate court for disposal. The invalidity of an enactment must necessarily give rise to a substantial question of law as to the interpretation of the Constitution.

It is no boubt possible for parties who are vigilant enough, to apply to the High Court in time under Article 228 of the Constitution for withdrawing a case from a subordinate court, instead of allowing that court to pronounce on the validity or invalidity of an enactment, and this is equally true of Government in criminal cases. In practice, however, they often fail to take prompt action. The result, in the words of Cooley, the well-known writer on American constitutional law, is that we have "the ludicrous spectacle of an inferior magistrate having merely police or other limited jurisdiction assuming to pass judgment upon the legislation of a State or country and declare it invalid." The responsible duty of declaring an enactment invalid, and

ng the solemn decision of the Legislature, should be discharged erior courts of the country.

accordingly proposes to amend section 113 of the Code of Civil section 432 of the Code of Criminal Procedure so as to make it the part of the subordinate courts to make a reference to the n every case where the subordinate court is satisfied—

(*a*) that the case before it involves a question as to the validity of an enactment, the determination of which is necessary for the disposal of the case ;

(*b*) that the enactment has not been authoritatively declared to be invalid ; and

(*c*) that in its own opinion the enactment is invalid or inoperative.

NEW DELHI ; B. R. AMBEDKAR.

The 1st March, 1951.

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